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October 17, 2005

Ron Jones, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

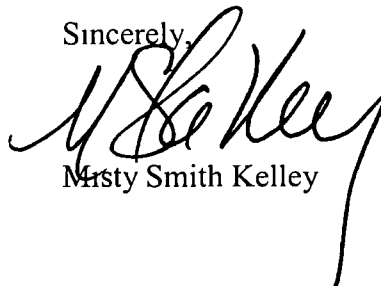
In Re Petition to Open an Investigation To Determine Whether Atmos Energy Corp.  
Should Be Required By The TRA to Appear and Show Cause That Atmos Energy  
Corp. Is Not Overearning In Violation Of Tennessee Law And That It Is Charging  
Rates That Are Just And Reasonable,  
Tennessee Regulatory Authority Docket No. 05-00258

Dear Chairman Jones:

Enclosed please find an original and fourteen copies of Atmos Energy Corporation's  
Response to the Consumer Advocate's Petition for filing in the above-referenced matter. Please  
stamp the enclosed copy "Filed" and return it to me in the enclosed postage pre-paid envelope.

If you have any questions regarding the enclosed please do not hesitate to contact me

Sincerely,



Misty Smith Kelley

MSK:klc  
Enclosures

C MSK 336315 v1

2015477-000029 10/17/2005

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Representative Office  
BDBC International LLC

IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

2005 OCT 18 PM 1:06

IN RE: PETITION TO OPEN AN )  
INVESTIGATION TO DETERMINE )  
WHETHER ATMOS ENERGY CORP. )  
SHOULD BE REQUIRED BY THE TRA )  
TO APPEAR AND SHOW CAUSE THAT )  
ATMOS ENERGY CORP. IS NOT )  
OVEREARNING IN VIOLATION OF )  
TENNESSEE LAW AND THAT IT IS )  
CHARGING RATES THAT ARE JUST )  
AND REASONABLE )

T.R.A. DOCKET ROOM

Docket No. 05-00258

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**Atmos Energy Corporation's Response to the Consumer Advocate's Petition**

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Atmos Energy Corporation ("Atmos" or the "Company") hereby files its response to the petition filed by the Attorney General, through the Consumer Advocate and Protection Division ("CAPD"), entitled Petition to Open An Investigation to Determine Whether Atmos Energy Corporation Should Be Required By The TRA To Appear and Show Cause That Atmos Energy Corporation Is Not Overearning In Violation Of Tennessee Law And That It Is Charging Rates That Are Just And Reasonable ("Petition").

Like the CAPD's previous show cause petition that was dismissed in Docket No. 04-00356, the instant Petition does not allege that Atmos is earning more than the rate of return authorized by the Tennessee Regulatory Authority ("TRA"). Likewise, the Petition does not allege that Atmos is in violation of any specific TRA rules or orders. Instead, by its Petition, the CAPD is requesting that the TRA issue an order directing TRA Staff to do two things: (1) conduct an investigation to determine whether the rates contained in Atmos' current tariffs are just and reasonable; and (2) "supervise an independent audit of Atmos' gas purchasing and resale policies, practices, procedures and tariffs as well as its expense allocation policies, practices, and procedures" (Test. of Dan McCormac, attached as Exhibit B to CAPD's Petition, at pp. 6-7).

The CAPD, as the party requesting relief from the Authority, bears the burden of proving that the extraordinary relief it requests is warranted. Tenn. Code Ann. § 65-2-109; Tenn. Comp. R. & Regs. 1220-1-2-.16. The CAPD's Petition falls far short of meeting that burden, and therefore the CAPD's requests should be denied.

### **I. THE CAPD HAS FAILED TO MEET ITS BURDEN OF PROOF.**

The CAPD's Petition does not explicitly acknowledge the fact that the law clearly places the burden of proof on the CAPD in this case, see Tenn. Code Ann. § 65-2-109; Tenn. Comp. R. & Regs. 1220-1-2-.16, nor does the Petition contain citation to any authority describing the showing the CAPD must make to meet that burden. Nevertheless, the CAPD claims in its Petition (p. 4.) that there is "clear" legal and historical precedent for the use of the TRA's show cause power to force a utility to lower its rates, citing to the Tennessee Court of Appeals' decision in In Re: Show Cause Proceeding to Amend the Billing and Collection Tariffs of South Central Bell, et al., 779 S.W.2d 375 (Tenn. Ct. App. 1989).

The decision relied on by the CAPD can hardly be characterized as clear precedent for the use of show cause proceedings to reduce rates. In the opinion cited by the CAPD, the Court not only expressly declined to rule on the procedural appropriateness of the show cause proceedings, finding those arguments had been waived, the Court also reversed that portion of the Commission's order addressing rates, finding the order "arbitrary and capricious." In Re: Show Cause, 779 S.W.2d at 380-82.

As demonstrated in Atmos' response to the CAPD's earlier show cause petition that was dismissed in TRA Docket No. 04-00356, a review of TRA show cause proceedings over the past 16 years reveals that neither the TRA, nor its predecessor, the Public Service Commission ("PSC"), has ever convened a show cause investigation in response to a request from the CAPD

or any third party. (See Atmos' Resp. to the Consumer Advocate's Pet., TRA Docket No. 04-00356, at pp. 8-10.) In addition, from that review it is evident that the TRA and PSC have initiated show cause proceedings only where their own Staff investigation uncovered violations of TRA or PSC rules or orders; no show cause investigations or proceedings have been convened for the purpose of determining whether a utility's existing tariff rates previously approved by the TRA/PSC are just and reasonable. The CAPD's request is unprecedented, and presents a legal issue of first impression for the TRA: assuming the show cause procedures can be used by the CAPD to challenge the reasonableness of existing utility rates, what prima facie showing must the CAPD make to require the TRA to order its Staff to investigate the reasonableness of current tariffs?

Although the CAPD's Petition does not expressly set forth what it contends the burden should be for the opening of an investigation into currently approved rates, it does suggest, without citation of authority, that "it should be up to Atmos to prove that its rates are just and reasonable" and that "[n]either consumers nor the Consumer Advocate should be required to file a complaint and attempt to compile the information necessary to put on a rate case." (CAPD Pet., p. 3.) The Tennessee Supreme Court has specifically rejected similar arguments in the context of a Consumer Advocate challenge to the reasonableness of a tariff change requested by BellSouth. In Consumer Advocate v. Greer, 967 S.W 2d 759 (Tenn. 1998), the Court held that the Consumer Advocate's conclusory allegations that BellSouth's requested tariff change was "unjust and unreasonable" were insufficient to meet the required prima facie showing for the convening of a contested case, even though BellSouth had the ultimate burden of proof in that case, pursuant to the tariff change statute, Tenn. Code Ann. § 65-5-103(a), to demonstrate that the change it was requesting was just and reasonable Greer, 967 S.W.2d at 763.

Like it does in its Petition in this case, the Consumer Advocate argued in Greer that it should be excused from making a prima facie showing because the utility possessed the information necessary to challenge the requested tariff change. Greer, 967 S.W.2d at 762-63; see also Pet. p. 3. The Court rejected that argument in Greer, pointing out that the CAPD has the statutory authority, pursuant to Tenn. Code Ann. § 65-4-118 (the Consumer Advocate statute the CAPD cites as its authority to bring the Petition in this case) to request the information it needs to make its case.

In Greer, the Tennessee Supreme Court clearly rejected the Consumer Advocate's attempt to avoid any obligation to make a prima facie showing simply by pointing to the regulated utility's ultimate burden to demonstrate the tariff change it requested was just and reasonable. In this case, the CAPD is requesting a much more significant commitment of TRA resources than the convening of a contested case it requested in Greer. Moreover, in this case the CAPD is not challenging a tariff change requested by Atmos, but is instead attacking the TRA's decision in Atmos' last rate case, and, through the testimony of CAPD witness Dan McCormac, essentially every TRA decision involving Atmos in the past decade, including each gas cost increase implemented through the TRA's Purchased Gas Adjustment ("PGA") Rule.<sup>1</sup> Clearly,

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<sup>1</sup> See Test of Dan McCormac at pp 3-4, citing as grounds for the CAPD's request for an investigation the following TRA rulings

- (1) Docket 01-00802 (granting all 3 gas companies one-time recovery of gas cost portions of bad debt through the PGA),
- (2) Docket No 03-00209 (extending the recovery of gas cost portions of bad debt through the PGA for all 3 gas companies),
- (3) Docket No 03-00540 (approving the contract Atmos negotiated with Goodyear to avoid Goodyear's bypass of Atmos' system), and
- (4) Docket Nos 95-02258 and 93-5553 (denying the Consumer Advocate's request to re-open the Company's 1995 rate case because of a contract with the Company's customer UCAR that was entered into and approved by the PSC after the final order in the rate case )

the burden of proof in this case must be much higher than the showing the Tennessee Supreme Court required in Greer.

Because the CAPD's Petition is a challenge to the reasonableness of previous TRA decisions, the CAPD must overcome the presumption of validity accorded TRA rate decisions, which are given the same deference under the law as legislative determinations. CF Indus. V. Tennessee Public Svc. Comm'n, 599 S.W.2d 536, 540 (Tenn. 1980) (holding that the PSC is a legislative body with statutorily recognized experience, technical competence and specialized knowledge in utility ratemaking, and thus is entitled to legislative deference); Southern Bell Telephone & Telegraph Co. v. Tennessee Public Svc. Comm'n, 304 S.W.2d 640, 649 (Tenn. 1957) (holding that the PSC consists of experts in ratemaking, and "[t]he product of this expert judgment in fixing these rates carries with their fixing a presumption of validity."). Consistent with this presumption, the courts have held that parties challenging the TRA's ratemaking decisions have a "heavy burden" to make a "convincing showing that the rates are invalid," Southern Bell, 304 S.W.2d at 649, and therefore the presumption of validity accorded such decisions can only be overcome with convincing evidence of a substantial and material nature, CF Indus., 599 S.W.2d at 540. The CAPD's Petition in this case does not present sufficient evidence to overcome the presumption of validity, and therefore the CAPD's request that the TRA order its Staff to conduct an investigation and audit should be denied.

**II. THE ANALYSIS PRESENTED THROUGH THE TESTIMONY OF DR. BROWN CONTAINS INCOMPLETE AND INACCURATE INFORMATION AND DOES NOT PROVIDE SUFFICIENT CAUSE FOR THE TRA TO OPEN THE REQUESTED INVESTIGATION.**

The CAPD's position that Atmos' rates in Tennessee should be reduced is based in large part on an analysis performed by Dr. Steve Brown, who concluded that Atmos' return on equity ("ROE") going forward should be set at 8.2%. Atmos engaged Dr. Don Murry, an economist

and recognized ratemaking expert to review Dr. Brown's analysis. As more thoroughly discussed in Dr. Murry's testimony attached as Exhibit A to this Response, Dr. Brown ignored commonly accepted ratemaking methodology and disregarded overwhelming economic information from independent financial sources that clearly demonstrates his results are not credible. Dr. Murry concluded that Dr. Brown's results are simply unsupportable. As such, Dr. Brown's testimony certainly does not constitute convincing evidence of a substantial and material nature, and therefore does not come close to meeting the burden of proof required to overcome the presumption that the rates the TRA set for Atmos are just and reasonable.

Dr. Brown's testimony contains three components: (1) a review of selected historical Company and economic information in the 10 years since Atmos' last rate case; (2) a comparison of what Dr. Brown represents as Company and market performance; and (3) conclusions from a DCF analysis, which Dr. Brown contends supports the conclusion that Atmos' ROE going forward should be set at 8.2%. As Dr. Murry explains, each component of Dr. Brown's testimony contains serious flaws which render his conclusions unsupportable. Notably, Dr. Brown's calculated ROE for Atmos of 8.2% is substantially lower than the 10.2% ROE recently granted Chattanooga Gas. Throughout both its previous show cause petition, and the current Petition, the CAPD has repeatedly maintained that the rate set in the Chattanooga Gas case represents what is also a fair rate of return for Atmos. This inconsistency renders the CAPD's reasoning suspect, to say the least.

Dr. Brown began his analysis with a very selected review of historic information in the 10 years since Atmos' last rate case. In that review, Dr. Brown concluded that Atmos' earnings are too high based almost exclusively on the fact that Atmos has not filed for a rate increase since 1995, but interest rates in the years following Atmos' 1995 rate case were lower than

originally predicted. As Dr. Murry explains, Dr. Brown fails to recognize that Atmos' failure to file for a rate increase in the past 10 years is a benefit, not a detriment. During that same 10 year period, inflation has risen by 27%, wage and salary levels increased 41%, and many other utilities have filed for and received rate increases, while Atmos' rates in Tennessee have not increased. As Dr. Murry points out, the delivered cost of natural gas in Tennessee has increased 80% during this same period, which is an increase Atmos has not contributed to at all. As explained in the testimony of Atmos Director of Rates Thomas Petersen, attached as Exhibit B to this Response, in focusing solely on past declines in interest rates, Dr. Brown only tells half of the story. Other costs have increased significantly for the Company during that same time period. For example, the Company's rate base as reflected in the 3.03 reports relied upon by Dr. Brown has increased from \$112 million to \$155 million, which has in turn increased the Company's investment depreciation expense and other taxes expense by a combined total of approximately \$5 million. Dr. Brown's one-sided analysis ignores these changes.

In addition, Dr. Brown's focus on the difference between the interest costs predicted in Atmos' 1995 rate case and actual interest rates in the late 1990's misses the point. Consistent with the prohibition on retroactive ratemaking, the TRA does not set rates based on past earnings, but rather on future projections. Dr. Brown noted the earlier decline in interest rates from 1995 to 2003, but failed to recognize the shift to interest rate increases that has occurred since 2003. Moreover, Dr. Brown also did not acknowledge the fact that reputable forecasters of both long-term and short-term interest rates are predicting rising rates for the next several years.

Dr. Brown's comparison of the Company's earnings, as reported in the 3.03 report, and what he characterizes as market performance is equally flawed, and in some instances just incorrect. As Mr. Petersen explains, the 3.03 report contains historic per book data without the



ratemaking corrections and adjustments that would be made for the purposes of determining the Company's current rate of return that should be used to set rates going forward. Some of those adjustments and corrections would include eliminating out of period expenses or revenues and adjusting revenues and expenses to normal levels, taking into account known changes in customers and usage, inflation trends, and activity levels, including adjustments for such items as rising medical care costs, and gas cost increases. As noted in Mr. Petersen's testimony, these adjustments can be significant, as they were in the Company's last rate filing in Tennessee, where the unadjusted historic rate of return was 11.48% and the rate of return after adjustments was 8.96%. Dr. Brown's analysis failed to acknowledge any of these required adjustments.

In addition, the market information Dr. Brown uses as his comparison is simply wrong. As Dr. Murry explains, he was unable to verify Dr. Brown's reported market returns with any reputable reported statistics of market returns. Dr. Murry noted that Dr. Brown reflected returns for the broad market that hovered around 5% and never exceeded 10%, where the reported returns for the Dow-Jones Industrials averaged 25% for the same time period. This inconsistency renders Dr. Brown's analysis meaningless.

As part of his comparison of what he contends are Company and market performance levels, Dr. Brown also relied on what he contended is the beta value for Atmos, which is a measurement of the comparative risk of the Company versus the market as a whole. As Dr. Murry noted, Dr. Brown reports a beta value for Atmos of .04, which is so low Dr. Murry dismisses it as silly. Dr. Brown's extremely low beta for Atmos, if correct, would indicate that Atmos' stock is only incrementally more risky than U.S. Treasury Bonds and probably less risky than Atmos' own corporate debt, a result Dr. Murry concludes is simply unrealistic. Again, Dr. Murry was unable to verify that the cited source of Dr. Brown's beta value for Atmos, Yahoo,

had ever reported a beta value for the Company. Dr. Murry noted that two reputable sources, Value Line and Thomson's, reported estimated beta values for Atmos as .70 and .86, respectively, which further demonstrates the ludicrous nature of the value used by Dr. Brown.<sup>2</sup>

Finally, Dr. Brown presented his conclusions from a DCF analysis, which he contended support an ROE for Atmos of 8.2%. Dr. Murry reviewed Dr. Brown's DCF results, and found them totally lacking in credibility. As Dr. Murry explains, Dr. Brown ignored the fact that Atmos' reported common stock earnings are currently less than the average reported earnings for Dr. Brown's group of comparable gas companies, while at the same time virtually every measure of industry risk from independent financial sources ranks Atmos as more risky than Dr. Brown's comparables gas utilities. Dr. Murry's review also revealed that most of the companies in Dr. Brown's group of comparable gas utilities have filed for rate increases in the past 10 years, with the most recent allowed returns ranging from 10.5% to 11.5%. Dr. Murry points out that the allowed returns of his comparable companies should have been an obvious indicator to Dr. Brown that his 8.2% recommended return for Atmos was way out of line with industry standards. Dr. Murry concluded that Dr. Brown disregarded all signals of investor expectations reported by reputable independent financial analysts and instead calculated measures of investor expectations for his group of 10 comparable gas companies that are much lower than either actual current returns or returns recently allowed by the commissions that regulate them. As such, Dr. Murry found Dr. Brown had failed to justify his result of 8.2% ROE for Atmos.

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<sup>2</sup> Although it is unclear, it appears Dr. Brown may have calculated his own beta value, using raw data from Yahoo, perhaps among other sources. Such calculations are not a recognized methodology accepted within the field, and were explicitly rejected by the TRA in the recent Chattanooga Gas rate case. See Order in Docket No. 04-00034, at p. 52.

Finally, Dr. Brown constructs a hypothetical capital structure for Atmos that Mr. McCormac uses to calculate an overall rate of return for the Company of 6.89%. As Mr. Petersen notes in his testimony, the hypothetical capital structure Dr. Brown constructs has absolutely no relation to the Company's actual capital structure. For example, Dr. Brown calculates an amount of short term debt for the Company equal to 12.8% of its permanent capital structure. As Mr. Petersen points out in his testimony, Atmos had 0% short term debt during most months in calendar 2004 and so far for 2005, with the average short term debt balance level equal to approximately 1% of total capital.

Dr. Brown's testimony is riddled with incorrect information and flawed methodology, and even the most cursory review of his analysis reveals that his results are simply not credible. As such, the CAPD has failed to meet its burden of proof, and the Petition should be dismissed.

### **III. MR. MCCORMAC'S TESTIMONY PROVIDES NO SUPPORT FOR THE CAPD'S REQUEST.**

In further support of its Petition, the CAPD submitted the testimony of Dan McCormac. Mr. McCormac's testimony consists mainly of gross mischaracterization of previous TRA decisions and baseless requests for full audits of everything from Atmos' gas purchasing activities to service and safety standards. As such, Mr. McCormac's testimony provides no support whatsoever for the CAPD's Petition.

In his testimony, Mr. McCormac recites a litany of TRA decisions impacting Atmos dating back to 1984, most of which were entered over the CAPD's objections, mischaracterizes those decisions, plus the Company's PGA filings, as "single issue rate increases," and argues these "single issue rate increases" justify not only a full review of Atmos' rates, but also a comprehensive audit of all of Atmos' operations. Mr. McCormac's characterization of these past TRA decisions as "single issue rate increases" is ridiculous rhetoric. The PGA Rule, which

provides that gas distribution utilities like Atmos recover 100% of the cost of natural gas they incur as a pass-through charge to the customer, has been in effect in Tennessee since the 1970's. Similar mechanisms exist in almost every state, and the principle of treating natural gas costs as a pass through charge is a cornerstone of gas regulation. The routine PGA filings Mr. McCormac cites simply allow the Company, like all gas companies, to notify the TRA when the cost of natural gas changes and adjust the pass-through charge accordingly. The PGA filings do not increase the amount Atmos earns on its investment in Tennessee, and are not, in any sense, single issue rate increases.

Likewise, the two uncollectibles dockets Mr. McCormac refers to simply confirmed that the pass-through gas costs in the original PGA Rule include gas costs that are incurred, but are unpaid and written off as uncollectible. The TRA's rulings in these dockets confirmed that the intent and scope of the original PGA rule is to ensure that all gas companies recover 100% of their natural gas costs from consumers as a pass-through charge. Mr. McCormac's characterization of these rulings as granting Atmos a single issue rate increase is preposterous.

Mr. McCormac also characterizes the pending dockets regarding the audit of the Company's Performance Based Ratemaking account for the 2000-2001 year as a request for a single issue rate increase. The Company has contended in the dockets that certain savings the Company achieved are within the scope of the original PBR plan, and the CAPD disagrees. Regardless of the outcome, Atmos' position regarding the scope of its PBR plan cannot legitimately be called a request for a rate increase. Interestingly, in that docket, the CAPD acknowledged that the TRA implemented the PBR plan (over the objections of CAPD, and specifically, Mr. McCormac) for the express purpose of avoiding costly and inefficient annual prudence audits, which is precisely the relief Mr. McCormac now requests in this case.

Mr. McCormac also cites the TRA's approval of a contract Atmos negotiated with Goodyear to prevent Goodyear from proceeding with its plans to bypass Atmos' system as another example of a "single issue rate increase" Atmos has requested and received. Again, Mr McCormac has grossly misrepresented the facts. Consistent with the PSC's ruling in Atmos' 1984 rate case, all margin amounts Atmos makes from the sale of gas to Goodyear are refunded 100% to consumers. Therefore, had Goodyear elected to bypass, Atmos would not have suffered any lost revenues, but consumers' bills would have increased. In approving the contract Atmos negotiated to avoid bypass, the TRA specifically found that Atmos had negotiated the highest rates possible, and that the contract Atmos secured was in the best interest of the consumers. How Mr. McCormac could possibly represent that a contract that had zero impact on Atmos' revenues was a single issue rate increase is inexplicable. Notably, the CAPD did not participate in the docket to approve the Goodyear contract, but is instead challenging the decision through its Petition in this case.

Finally, Mr. McCormac takes issue with the PSC's 1996 decision denying the Consumer Advocate's request that the Commission reopen the Company's 1995 rate case based on a contract negotiated and approved by the Commission months after the rate case order became final. Regardless of Mr. McCormac's disagreement with that decision, such denial cannot reasonably be construed as a single issue rate increase, and certainly has no bearing on whether the Company's current tariffs are just and reasonable.

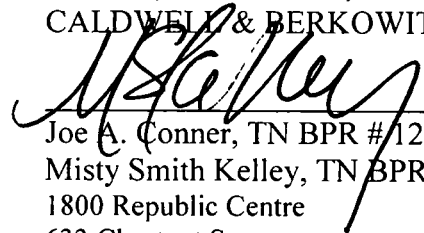
The current Petition is not an avenue for the CAPD to relitigate past disputes, or to reverse cases it believes were wrongly decided. Mr. McCormac's catalog of grievances the CAPD has suffered as a result of past TRA orders provides no support for the CAPD's Petition in this case.

#### **IV. CONCLUSION.**

By its Petition, the CAPD is asking the TRA to order its Staff to undertake an investigation into the reasonableness of the rates the TRA has set for Atmos and to perform a comprehensive audit of all aspects of Atmos' operations. As support for this unprecedented and extraordinary request, the CAPD has submitted the conclusions of two witnesses. These conclusions are based on incorrect information and gross mischaracterizations, and upon examination, it is clear these conclusions are unsupportable. The CAPD has therefore failed to produce the convincing evidence of a substantial and material nature that is required to overcome the presumption that the rates the TRA has set for Atmos are just and reasonable. As such, the CAPD's petition should be denied.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN  
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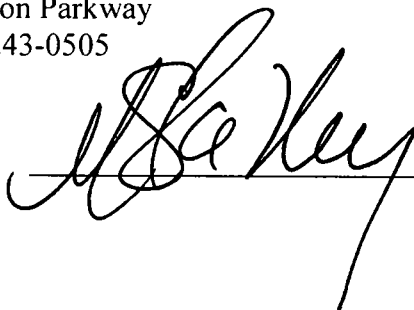
Attorneys for Atmos Energy Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been mailed, postage prepaid, to the following parties of interest this 17th day of October, 2005.

Vance L. Broemel  
Assistant Attorney General  
Office of Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, TN 37202

Richard Collier  
General Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505



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**Exhibit A**

**Issue: Cost of Capital**  
**Witness: Donald A. Murry**  
**Type of Exhibit: Responsive Testimony**  
**Sponsoring Party: Atmos Energy Corp**  
**Docket Number: 0500258**  
**Date Testimony Prepared: 10/05**

ATMOS ENERGY CORPORATION  
BEFORE THE TENNESSEE REGULATORY AUTHORITY

RESPONSIVE TESTIMONY  
OF  
DONALD A. MURRY, Ph D.

OCTOBER 2005

C. H. GUERNSEY & COMPANY  
ENGINEERS - ARCHITECTS – CONSULTANTS  
OKLAHOMA CITY, OKLAHOMA



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ATMOS ENERGY CORPORATION  
BEFORE THE TENNESSEE REGULATORY AUTHORITY  
DOCKET NO. 05-00258  
Responsive Testimony  
Of  
Donald A Murry, Ph D

**Q. PLEASE STATE YOUR NAME.**

A. My name is Donald A Murry.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

A. I am a Vice President and economist with C H. Guernsey & Company in Oklahoma City. I work out of C. H. Guernsey & Company offices at 5555 North Grand Boulevard, Oklahoma City, Oklahoma and 2931 Kerry Forrest Parkway, Tallahassee, Florida. I am also a Professor Emeritus of Economics on the faculty of the University of Oklahoma.

**Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

A. I have a B. S. in Business Administration, and a M.A. and a Ph.D. in Economics from the University of Missouri - Columbia.

**Q. PLEASE DESCRIBE YOUR PROFESSIONAL BACKGROUND.**

A. From 1964 to 1974, I was an Assistant and Associate Professor and Director of Research on the faculty of the University of Missouri - St. Louis. For the period 1974-98, I was a Professor of Economics at the University of Oklahoma, and since 1998 I have been a Professor Emeritus at the University of Oklahoma. Until 1978 I also served as Director of the Center for Economic and Management

1 Research. In each of these positions, I directed and performed academic and  
2 applied research projects related to energy and regulatory policy. During this time  
3 I also served on several state and national committees associated with energy  
4 policy and regulatory matters, and I published and presented a number of papers  
5 in the field of regulatory economics in the energy industries.

6 **Q. PLEASE DESCRIBE YOUR REGULATORY EXPERIENCE.**

7 A. Since 1964 I have consulted for a number of private and public utilities, state and  
8 federal agencies, and other industrial clients regarding energy and regulatory  
9 matters in the United States, Canada and other countries. In 1971-72, I served as  
10 Chief of the Economic Studies Division, Office of Economics of the Federal  
11 Power Commission. From 1978 to early 1981, I was Vice President and Corporate  
12 Economist for Stone & Webster Management Consultants, Inc. I am now a Vice  
13 President with C. H. Guernsey & Company. In all of these positions I have  
14 directed and performed a wide variety of applied research projects and conducted  
15 other projects related to regulatory matters. Recently I have assisted both private  
16 and public companies and government officials in areas related to the regulatory,  
17 financial and competitive issues associated with the restructuring of the utility  
18 industry in the United States and other countries.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE OR BEEN AN EXPERT**  
20 **WITNESS IN PROCEEDINGS BEFORE REGULATORY BODIES?**

21 A Yes, I have appeared before the U.S. District Court-Western District of Louisiana,  
22 U.S. District Court-Western District of Oklahoma, District Court-Fourth Judicial  
23 District of Texas, U.S. Senate Select Committee on Small Business, Federal

1 Power Commission, Federal Energy Regulatory Commission, Interstate  
2 Commerce Commission, Regulatory Commission of Alaska, Alabama Public  
3 Service Commission, Arkansas Public Service Commission, Colorado Public  
4 Utilities Commission, Florida Public Service Commission, Georgia Public  
5 Service Commission, Illinois Commerce Commission, Iowa Utilities Board,  
6 Kansas Corporation Commission, Kentucky Public Service Commission,  
7 Louisiana Public Service Commission, Maryland Public Service Commission,  
8 Missouri Public Service Commission, Public Service Commission of the State of  
9 Mississippi, New Mexico Public Service Commission, New York Public Service  
10 Commission, Power Authority of the State of New York, Nevada Public Service  
11 Commission, North Carolina Utilities Commission, Oklahoma Corporation  
12 Commission, South Carolina Public Service Commission, Tennessee Public  
13 Service Commission, Tennessee Regulatory Authority, Texas Public Utilities  
14 Commission, the Railroad Commission of Texas, the State Corporation  
15 Commission of Virginia and the Public Service Commission of Wyoming.

16 **Q. WHAT IS THE NATURE OF YOUR TESTIMONY?**

17 A. I am responding to the testimony of Dr. Steve Brown concerning the level of  
18 earnings of Atmos Energy Corporation in the State of Tennessee. Dr. Brown has  
19 reviewed very selective data and reached some improbable conclusions regarding  
20 the relative earnings level of Atmos Energy in Tennessee. Although I have not  
21 made a complete study to determine the appropriate allowed return on common  
22 stock equity of Atmos in Tennessee, I have determined that Dr. Brown's analysis  
23 did not adequately support his recommendations for Atmos. He based his stated

1 conclusions on narrow and incomplete use of economic facts. He disregarded  
2 basic information about the earnings of utilities and their allowed returns.

3 **Q. WHICH OF DR. BROWN'S CONCLUSIONS REGARDING ATMOS'**  
4 **EARNINGS IN TENNESSEE ARE YOU SAYING LACK ANALYTICAL**  
5 **SUPPORT FROM DR. BROWN?**

6 A. First, he did not adequately support his conclusion that Atmos is over-earning in  
7 Tennessee. Second, his conclusion that an adequate return on common equity in  
8 Tennessee is 8 2 percent ignores important industry statistics. An example is his  
9 summarizing statement at page 1, lines 21-32, where he stated:

10 There's no doubt about it—they [*consumers*] are paying unjust,  
11 unreasonable prices. Atmos earns huge profits in Tennessee, charging  
12 millions of dollars more than needed for the company to make a fair rate-  
13 of-return here. In the past 10 years Atmos's [*sic*] profit rate has regularly  
14 reached 13 percent and twice exceeded 20 percent, easily outperforming  
15 mainstream profit levels in Tennessee's economy and the national  
16 economy. [*Insertion for clarification*]  
17

18 His assertion that "There's no doubt about it ..." is way over the top. A cursory  
19 review of Dr. Brown's analysis creates far more doubt than reassurances. In fact,  
20 this assertion is the consequence of an incomplete analysis. Even a high-altitude  
21 check of readily available data puts a completely different perspective on the  
22 economic circumstances of Atmos in Tennessee, as well as the U.S. and  
23 Tennessee economies. Apparently he ignored this information.

24 **Q. WHY DID YOU CALL DR. BROWN'S ANALYSIS "INCOMPLETE?"**

25 A. Dr. Brown compared reported earnings of Atmos in Tennessee to the earnings  
26 reported by a group of U S. companies, but he failed to put this comparison in  
27 perspective To support his assertion regarding earnings of Atmos since the last

1 rate case, he reported only the decline in interest rates during this period. I could  
2 not find any explanation in his testimony and schedules showing when or how he  
3 had consulted other information. He concluded [Brown, Direct, page 4, lines 24-  
4 29], "Chart 2 shows Atmos's [sic] profit-rates arching over the normal ones  
5 throughout the stock markets, but this is to be expected because Atmos's [sic] last  
6 rate case was in 1995, a time when interest rates were very high." His analysis  
7 that focused exclusively on debt costs and interest rates is incomplete and  
8 misleading, and he disregarded significant economic factors. This lack of  
9 economic perspective led Dr. Brown to some upside-down misinterpretations of  
10 the data that he reviewed. Furthermore, Dr. Brown concludes that Atmos' rates  
11 going forward should be lowered based in large part on his incomplete review of  
12 historical information from the past ten years. This violates a fundamental  
13 principle of ratemaking, which is that rates must be set on a forward looking  
14 basis. Setting rates based solely on historic information with no adjustments for  
15 future projections would likely result in impermissible retroactive ratemaking.

16 **Q. WHY DID YOU SAY THAT DR. BROWN'S ANALYSIS DISREGARDED**  
17 **RELEVANT ECONOMIC FACTORS?**

18 Dr. Brown ignored the most basic economic factor affecting the rate payers in  
19 Atmos' service territory during the period since the last rate case. He did not even  
20 consider the economic consequences of the merger of United Cities into Atmos.  
21 He ignored the benefits of economies of scale and scope of the merged  
22 companies.

1    **Q.    WHY IS THE MERGER OF UNITED CITIES INTO ATMOS SINCE THE**  
2    **LAST RATE CASE AN IMPORTANT ECONOMIC FACTOR?**

3    A.    As he described in his analysis, central to his argument that Atmos' earnings are  
4    excessive is an observed decline in the weighted average cost of debt of the  
5    merged companies. However, he failed to acknowledge that a key benefit of the  
6    larger company is the economies of scale, including the economies of scale  
7    associated with financing utility operations. Economies of scale such as market  
8    presence, investor recognition, spreading fixed financing costs over larger  
9    security issues and favorable treatment by institutional investors are the kinds of  
10   benefits that fueled the national trend of utility mergers. In addition, other cost  
11   savings can result from combining utility operations in such specialized areas as  
12   call centers, administrative services and acquisition of supplies.

13   **Q.    IN YOUR OPINION IS THE MERGER OF UNITED CITIES INTO**  
14   **ATMOS CONSISTENT WITH THE U. S. TREND OF INCREASINGLY**  
15   **LARGER UTILITY COMPANIES?**

16   A.    Yes. The expected benefits from larger utility operations are universally the cause  
17   of the tendency of utilities to merge in the U. S.

18   **Q.    ARE THE COST BENEFITS FROM ECONOMIES OF SCALE OF**  
19   **MERGED UTILITIES LIKELY TO BE TEMPORARY?**

20   A.    No. Economies of scale in expanded enterprises are a structural change. Most  
21   likely this will have long-term consequences.

22   **Q.    WHY DID YOU CALL DR. BROWN'S CONCLUSIONS "UPSIDE OWN?"**

1 A. In a remarkable, misinterpretation of Atmos' financial circumstances, Dr. Brown  
2 tried to turn the obvious attribute of avoiding filing for a rate increase into a bad  
3 thing. He argued that Atmos' failure to file for a rate increase for over ten years  
4 was support for his claim that Atmos' earnings are excessive. Dr Brown stated  
5 [Brown, Direct, page 2, lines 1-5], "In Tennessee, Atmos has resisted and avoided  
6 a rate case for over 10 years, a time two to five times longer than the length of the  
7 company's regular rate-case cycle..."

8 **Q. WHAT ABOUT DR. BROWN'S ANALYSIS LACKED ECONOMIC**  
9 **PERSPECTIVE?**

10 A. By concentrating only on divisional accounting earnings, he has ignored a  
11 fundamental point. That is, only by finding offsetting savings can rates of a  
12 regulated utility remain unchanged for over ten years. In this case, this  
13 observation is especially revealing. During this period of rising costs many other  
14 utilities have filed for and received rate increases, but Atmos has maintained the  
15 same rate level in Tennessee.

16 **Q. DID YOU REVIEW THE LEVEL OF INFLATION IN THE U. S. DURING**  
17 **THIS TEN-YEAR PERIOD OF DR. BROWN'S ANALYSIS?**

18 A. Yes. As I illustrate in Schedule DAM-1, during this period the Consumer Price  
19 Index rose by 27 percent in the U.S. Of course, regional economic factors, such as  
20 local wage and salary levels, affect local rates of inflation, but generally the rate  
21 of inflation in Tennessee should be similar to the national average. Many factors  
22 such as energy prices and interest rates that are important to the regional  
23 economies are driven by national markets.

1   **Q.   YOU MENTIONED WAGE AND SALARY LEVELS. HAVE INCOME**  
2       **LEVELS ALSO INCREASED IN TENNESSEE?**

3   A.   Yes. I reviewed the Tennessee Per Capita Personal Income over this same ten-  
4       year period. As Schedule DAM-2 shows, the increase in Per Capita Personal  
5       Income during the period from 1995 to 2004 was 41 percent.

6   **Q.   DO YOU KNOW IF THE PER CAPITA PERSONAL INCOME HAS**  
7       **GROWN BY THE SAME AMOUNT IN THE ATMOS SERVICE**  
8       **TERRITORY?**

9   A.   Although I could not find 2004 data regarding the per capital personal income in  
10      the counties served by Atmos' in Tennessee, I was able to analyze the income  
11      growth from 1995 through 2003. As I have illustrated in Schedule DAM-3, the  
12      weighted average growth in per capital personal income in this area was 30.9  
13      percent over this shorter period.

14   **Q.   YOU MENTIONED THAT THE WEIGHTED COST OF DEBT OF**  
15      **ATMOS DECLINED DURING THIS TEN-YEAR PERIOD. IS THIS**  
16      **CORRECT?**

17   A.   Yes. The weighted cost of debt of Atmos declined during this ten-year period as  
18      Dr. Brown pointed out in his testimony. For example, Dr. Brown's Chart 6, of his  
19      Direct Testimony was the reference for his statement that it

20               . . . shows Atmos continually incorporating low interest rates into its  
21               business operations every year since 1995. Although the company's  
22               predecessor predicted an interest cost of 9.67 percent by November 1996,  
23               the actual costs are always lower. . .  
24



1           However, as I stated previously, this is a very narrow interpretation of the  
2           economic and financial circumstances of Atmos. Consequently, this is a very  
3           misleading interpretation of the Atmos' debt costs.

4   **Q.   WHAT IS WRONG WITH DR. BROWN'S INTERPRETATION OF**  
5   **ECONOMIC AND FINANCIAL CIRCUMSTANCES OF ATMOS?**

6   A.   First, as I discussed, Dr. Brown totally missed the long-term economic benefits of  
7           the merged companies. Second, he misstated or misinterpreted the changing  
8           interest rates. As Schedule DAM-4 shows, the yields on U. S. Treasury securities,  
9           which represent the basic level of interest rates, have increased since 2003. Dr.  
10          Brown noted the earlier decline in interest rates, but he did not appear to  
11          recognize the shift of interest rates in this later period. Moreover, as this schedule  
12          also shows, reputable forecasters of both long-term and short-term interest rates  
13          are predicting rising rates for the next several years. This latter observation is  
14          especially significant in this proceeding. If implemented, one might expect the  
15          outcome of Dr. Brown's proposed rate adjustment to remain in place for at least a  
16          couple of years.

17   **Q.   DID YOU REVIEW ANY OTHER ECONOMIC FACTORS THAT MAY**  
18   **BE RELEVANT TO THE INTERPRETATION OF THE CONSTANT**  
19   **RATES OF ATMOS OVER THE PAST TEN-YEAR PERIOD?**

20   A.   Yes. I reviewed the delivered cost of natural gas over this period. As Schedule  
21          DAM-5 shows, the delivered cost of natural gas increased by 80 percent in  
22          Tennessee over this same period. Obviously, the increases in other factors, such  
23          as the field prices, have been significant during this period. Nevertheless, with

1 constant distribution rates Atmos has not contributed to the increase in the  
2 weighted average cost of gas delivered in Tennessee.

3 **Q. YOU STATED PREVIOUSLY THAT YOU FOUND THAT DR. BROWN'S**  
4 **ANALYSIS DID NOT SUPPORT HIS RECOMMENDED RETURN FOR**  
5 **ATMOS. IS THIS CORRECT?**

6 A. Yes. I reviewed the data he presented in support of his recommendation of an  
7 allowed return of 8.2 percent for Atmos in Tennessee [See Brown, Direct, page 3,  
8 lines 9-13]. To review the credibility of his recommendation, I reviewed financial  
9 statistics of the comparable natural gas utilities that Dr. Brown used in his  
10 analysis. As part of this investigation I compared the return on common stock of  
11 Atmos to the returns of Dr. Brown's comparable companies. As Schedule DAM-6  
12 shows, Atmos' common stock earnings are currently less than the average of his  
13 comparable gas utilities. As this schedule shows, *Yahoo!FINANCE* reports that  
14 the current common stock equity returns of Atmos Energy are 11.5 percent. In  
15 comparison, the average current return on common stock equity for the  
16 comparable utilities in Dr. Brown's study is 11.9 percent. Next I evaluated  
17 whether an investment in Atmos' common stock was more or less risky than an  
18 investment in Dr. Brown's comparable companies.

19 **Q. HOW DID YOU COMPARE THE RISK OF INVESTING IN ATMOS'**  
20 **COMMON STOCK TO THE RISK OF INVESTING IN DR. BROWN'S**  
21 **COMPARABLE UTILITIES?**

22 A. I compared the financial measures of risk reported by several independent  
23 financial analysts. From this comparison, as I illustrate in Schedule DAM-7,

1 virtually every measure of industry risk ranks Atmos as more risky than Dr.  
2 Brown's comparable gas utilities. Using such measures of risk as Standard &  
3 Poor's ("S&P") Business Position, S&P's Debt Credit Rating, *Value Line's*  
4 Safety and Financial Strength, reveals that Atmos is more risky than the average  
5 of Dr. Brown's comparable utilities. In fact, Atmos ranks near the bottom in  
6 every one of these risk categories.

7 **Q. DID YOU CONSIDER ANY OTHER MEASURES OF RISK OF ATMOS?**

8 A. Yes. I studied Dr. Brown's measure of Atmos' beta which he called "a standard  
9 measure of risk" [Brown, Direct, page 6, lines 25-26]. Beta is an important  
10 statistic as it measures market volatility of common stock prices. However, Dr  
11 Brown reports a beta for Atmos that is so low that it is silly. For example, Dr.  
12 Brown states that Atmos' "current beta is just .04" [Brown, Direct, page 6, line  
13 28].

14 **Q. WHY DID YOU CALL DR. BROWN'S MEASURE OF ATMOS' BETA**  
15 **"SILLY?"**

16 A A beta value of 0.04 indicates that regardless how volatile the overall market—  
17 with rapid price spikes and collapses—the price of that company's common stock  
18 will remain relatively unchanged Further, the extremely low beta value of 0 04  
19 implies that Atmos' stock is only incrementally more risky than U.S. Treasury  
20 Bonds and probably less risky than Atmos' own corporate debt. This is an  
21 unrealistic expectation for Atmos We cannot expect Atmos' common stock  
22 investors to remain totally unaffected by dramatic market movements

23 **Q. WHY IS BETA IMPORTANT AS A MEASURE OF RISK IN THIS CASE?**

1 A. Apparently Dr. Brown relied heavily on this low beta estimate as his measure of  
2 risk to an investor in Atmos' common stock. For example, he stated, in Chart 4 of  
3 6,

4 Yahoo's Beta Values, A Widely Known Measure of Risk, Show That  
5 Atmos Has Little Risk In Comparison To The Risks In Tennessee's  
6 Private Sector And In The NYSE, NASDAQ, AMEX and OTC Markets.  
7

8 I inferred from this description that his beta estimate was an important  
9 justification for him to recommend a relative low return on common stock for  
10 Atmos in Tennessee.

11 **Q. WHAT DO YOU BELIEVE MIGHT BE A MORE REASONABLE BETA**  
12 **FOR THE COMMON STOCK OF ATMOS?**

13 A Historically the betas for utilities are less than 1.0, but considerably greater than  
14 0.04. Notably, *Value Line's* estimate of Atmos' beta is 0.70, and Thomson's  
15 estimate of Atmos' beta is 0.86. These estimates are many times greater than Dr.  
16 Brown's estimated beta for Atmos of 0.04.

17 **Q. DID YOU ATTEMPT TO VERIFY THAT YAHOO REPORTED A BETA**  
18 **OF 0.04 FOR ATMOS?**

19 A. Yes, I tried to confirm that Yahoo reported such a low beta for Atmos when I  
20 began my investigation of Dr. Brown's testimony. As of September 27<sup>th</sup>, Yahoo's  
21 webpage was not reporting any beta for Atmos. I have enclosed a copy of the  
22 downloaded page from Yahoo as Schedule DAM-8. Consequently, I can not  
23 confirm if or why Yahoo might have reported such a low beta for Atmos.

1   **Q.   DID YOU INVESTIGATE ANY OTHER FACTORS REPORTED BY DR.**  
2       **BROWN THAT MAY HAVE INFLUENCED HIS RECOMMENDATIONS**  
3       **IN THIS PROCEEDING?**

4   A.   Yes. In Chart 2 of his direct testimony, Dr. Brown showed returns on common  
5       equity for broad market indices that are much lower than the earnings of Atmos. I  
6       attempted to verify these very low market returns, and I determined that his  
7       representation of accepted returns in the U.S. stock markets is not consistent with  
8       accepted statistics. I could not verify the source or accuracy of his reported returns  
9       on common stock equity for the broad stock markets. For example, I believe that  
10      he calculated his own estimates of market returns. None that he reported exceeded  
11      ten percent, and most hovered around five percent.

12   **Q.   HOW DID YOU DETERMINE THAT DR. BROWN'S CALCULATIONS**  
13      **MAY NOT BE ACCURATE?**

14   A.   I compared his calculated returns to published returns on common equity for two  
15      major market indices, the Dow-Jones Industrials and the Morgan Stanley  
16      Composite Index. As I illustrate in Schedule DAM-9 these recognized market  
17      return measures do not approach the low returns calculated by Dr. Brown. In fact,  
18      the returns on common stock for the Dow-Jones Industrials have averaged 25  
19      percent since the Company's last rate case.

20   **Q.   YOU EXPLAINED THAT FINANCIAL ANALYSTS REPORTED THAT**  
21      **ATMOS' COMMON STOCK IS A MORE RISKY INVESTMENT THAN**  
22      **THE COMMON STOCKS IN DR. BROWN'S COMPARABLE UTILITIES.**  
23      **DID YOU FIND THAT ATMOS' COMMON STOCK EARNINGS WERE**

1           **COMMENSURATELY HIGHER THAN THE EARNINGS OF THESE**  
2           **OTHER UTILITIES?**

3    A.    No. As I pointed out previously, Atmos' common stock earnings are currently  
4           lower than the earnings of Dr. Brown's comparable utilities.

5    **Q.    YOU POINTED OUT PREVIOUSLY THAT ATMOS HAD NOT FILED**  
6           **FOR A RATE INCREASE IN TENNESSEE DURING THE PERIOD**  
7           **STUDIED BY DR. BROWN. DID ANY OF DR. BROWN'S**  
8           **COMPARABLE UTILITIES FILE FOR RATE INCREASES DURING**  
9           **THE TEN-YEAR PERIOD THAT HE STUDIED?**

10   A.    Yes. Most of them did. I have illustrated the dates of the rate case orders of the  
11           comparable utilities studied by Dr. Brown in Schedule DAM-10. Although  
12           Regulatory Research Associates did not report the returns on common equity for  
13           Laclede and Northwest Natural, they each have had recent rate decisions. For the  
14           remaining eight utilities, the most recent allowed returns on common equity have  
15           been 10.5 to 11.5 percent. The average return on equity for these gas utilities is  
16           10.83 percent with an average common equity ratio of 49.62 percent. The allowed  
17           returns of his comparable companies are another benchmark that should have  
18           been obvious to Dr. Brown as he prepared his analysis. This also should have  
19           been an indicator to him that his calculation of 8.2 percent for Atmos' common  
20           equity is out of line with current industry standards.

21   **Q.    CAN YOU SUMMARIZE YOUR REVIEW OF DR. BROWN'S**  
22           **RECOMMENDED ALLOWED RETURN FOR ATMOS IN TENNESSEE?**

1 A. Dr. Brown put together an upside-down argument where Atmos' not applying for  
2 a rate increase in Tennessee during a ten-year period of inflation is bad.  
3 Moreover, as part of his analysis he compared Atmos to a group of utilities that  
4 have mostly applied for and received rate increases during this same period. Also  
5 in his convoluted analysis, Dr. Brown avoided recognizing that an investment in  
6 Atmos' common stock is relatively more risky than an investment in the average  
7 common stock of his comparable companies--despite the overwhelming evidence  
8 by independent financial sources. If he had, he surely would have acknowledged  
9 that the average actual return or the average allowed return on common stock of  
10 his comparable group might be a reasonable benchmark return on common for  
11 Atmos in Tennessee. Instead, he disregarded all of these signals by independent  
12 financial analysts, and he calculated measures of investor expectations for each of  
13 these companies that are much lower than either their actual current returns or  
14 their recently allowed returns by regulators. In summary, Dr. Brown has failed to  
15 justify either his conclusion that Atmos has excessive earnings in Tennessee or  
16 that a return of 8.2 percent on common stock is a reasonable return for Atmos

17 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY AT THIS TIME?**

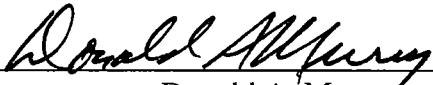
18 A. Yes, it does.

19

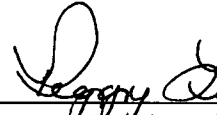
County of Oklahoma )  
 )  
State of Oklahoma )

AFFIDAVIT OF DONALD A MURRY

Donald A. Murry, being first duly sworn, deposes and says that he is the witness who sponsors the accompanying testimony, that said testimony was prepared by him and under his direction and supervision, that if inquiries were made as to the facts in said testimony and schedules, he would respond as therein set forth; and that the aforesaid testimony and schedules are true and correct to the best of his knowledge, information, and belief.

  
Donald A. Murry

Subscribed and sworn to before me this 14th day of October, 2005.

 - 02014318  
Notary Public #

My Commission expires:

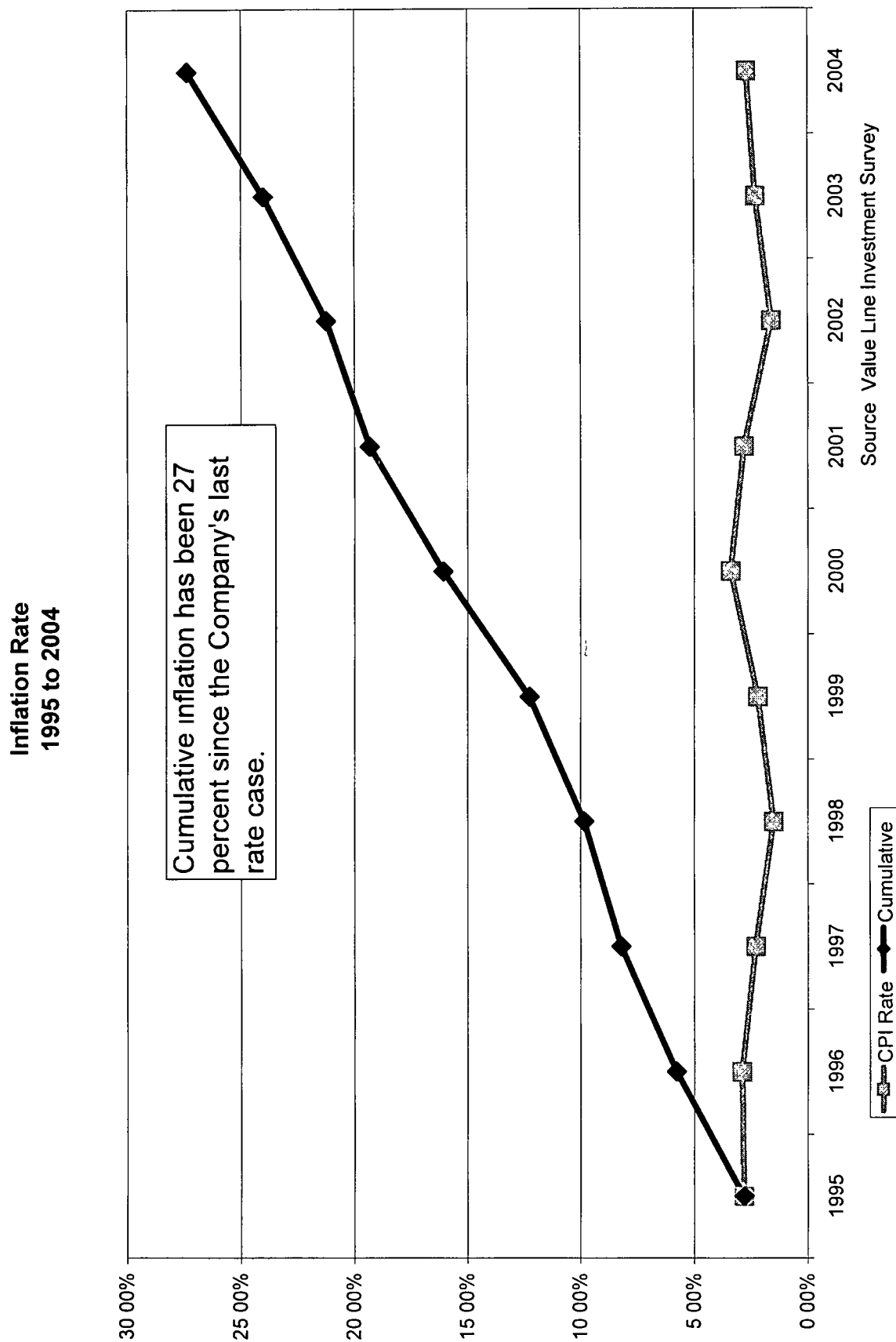
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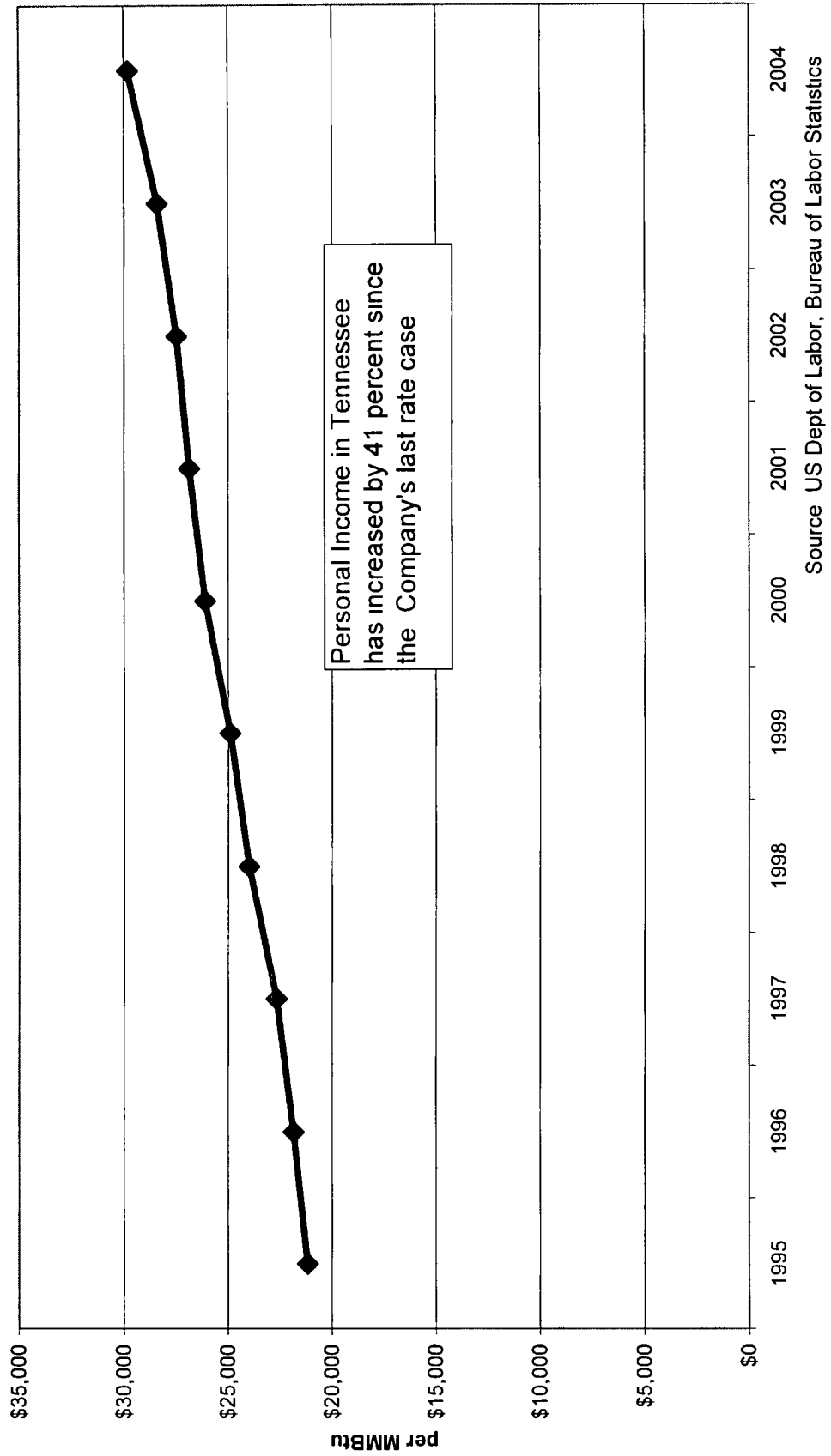
## Atmos Energy

### Index of Schedules

Schedule DAM-1:	Growth in the Consumer Price Index Chart
Schedule DAM-2:	Growth in the Tennessee Per Capita Personal Income Chart
Schedule DAM-3:	Comparison of the Growth in the Service Counties' Personal Income
Schedule DAM-4	Chart of Interest Rates
Schedule DAM-5:	Growth in Residential Gas Costs in Tennessee
Schedule DAM-6:	Comparison of Steve Brown's Local Distribution Companies' Current Returns on Equity
Schedule DAM-7:	Comparison of Steve Brown's Local Distribution Companies' Risk Statistics
Schedule DAM-8	Atmos' Financial Data Page from Yahoo!
Schedule DAM-9:	Chart of Board Market Indices Returns on Equity
Schedule DAM-10	Comparison of Steve Brown's Local Distribution Companies' Rate Cases



### Tennessee Per Capita Personal Income 1995 to 2004



## Atmos Energy TN

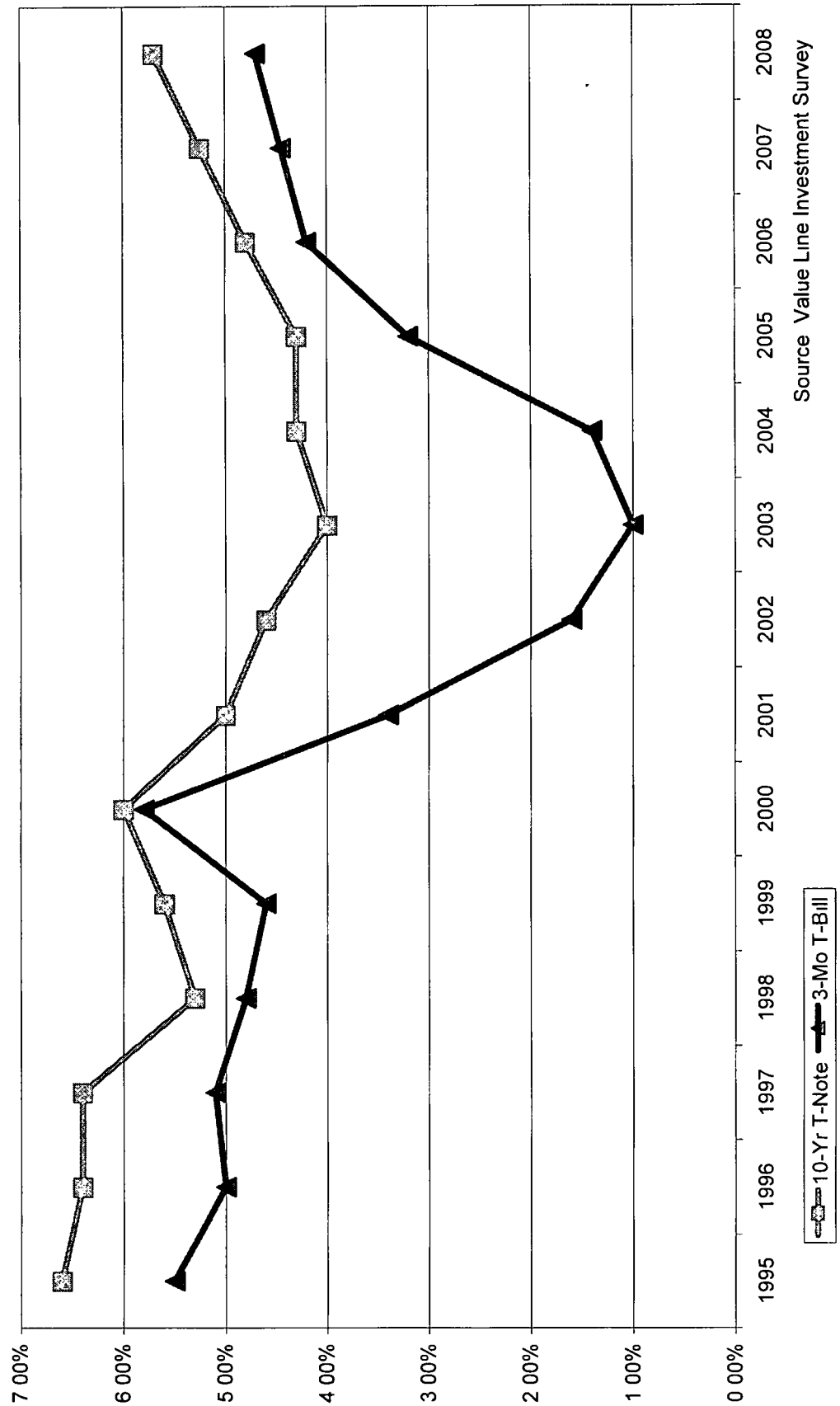
## Per Capital Personal Income

## Atmos Service Area Counties

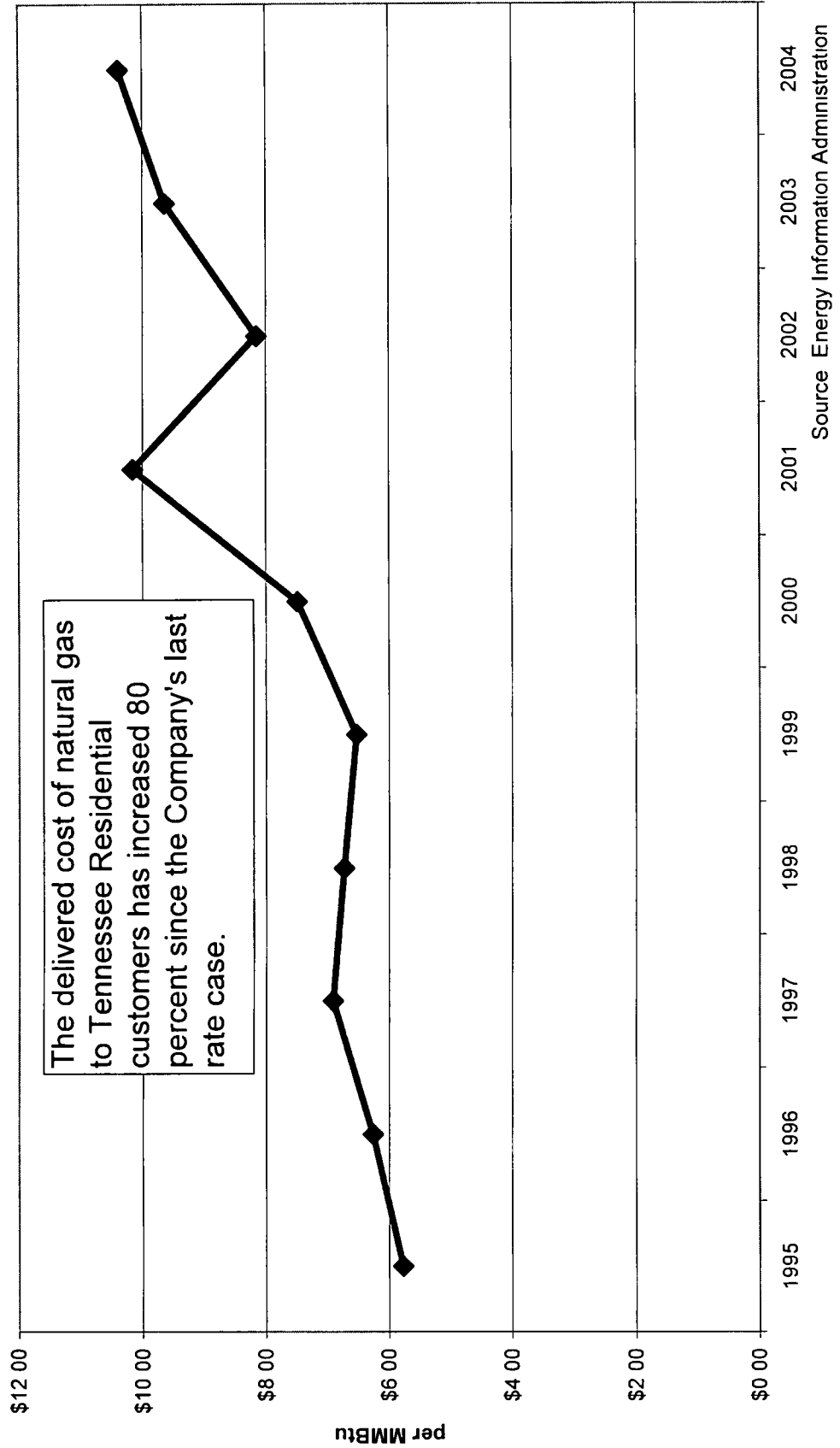
County	1995	2003	Growth
Bedford	\$18,722	\$24,685	31 85%
Blount	\$19,220	\$26,253	36 59%
Carter	\$14,894	\$20,197	35 60%
Greene	\$17,631	\$26,610	50 93%
Hamblen	\$18,820	\$25,395	34 94%
Hawkins	\$16,569	\$22,029	32 95%
Maury	\$24,146	\$28,810	19 32%
Moore	\$17,218	\$23,166	34 55%
Obion	\$20,616	\$24,889	20 73%
Rutherford	\$21,915	\$27,910	27 36%
Sullivan	\$20,555	\$27,232	32 48%
Washington	\$19,611	\$24,886	26 90%
Williamson	\$32,698	\$42,694	30 57%
Weighted Averages	\$21,464	\$28,091	30 87%

Source University of Tennessee, Center for Economic and  
Business Research

Treasury Yields  
1995 to 2008



### Tennessee Natural Gas Residential Price 1995 to 2004



## Atmos Energy TN

AG Witness Steve Brown's Comparable Utilities

Current Returns on Equity from YAHOO! Finance

Company	ROE
Atmos Energy	11 50%
AGL Resources	14 43%
KeySpan	11 58%
Laclede Group	10 45%
New Jersey Resources	15 67%
NICOR	14 63%
Northwest Natural	15 50%
Peoples Energy	7 92%
Piedmont Natural	10 48%
Southwest Gas	7 61%
WGL Holdings	10 70%
Average	11 90%

Source YAHOO! Finance

## Atmos Energy TN

## AG Witness Steve Brown's Comparable Companies

## Summary of Risk Statistics

Company	Standard & Poor's		Value Line	
	Business Position	Credit Rating	Safety	Financial Strength
Atmos Energy	4	BBB	3	B+
AGL Resources	4	A-	2	B++
KeySpan	4	A	2	B++
Laclede Group	3	A	2	B+
New Jersey Resources	2	A+	2	B++
NICOR	3	AA	3	A
Northwest Natural	1	A+	1	A
Peoples Energy	2	A-	1	A
Piedmont Natural	2	A	2	B++
Southwest Gas	3	BBB-	3	B
WGL Holdings	3	AA-	1	A
Average	2.7	A	1.9	B++

## Sources

Standard &amp; Poor's Credit Ratings Website

Value Line Investment Survey



Schedule DAM-8

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**Key Statistics**

Get Key Statistics for

Data provided by [Capital IQ](#), except where noted.**VALUATION MEASURES**

Market Cap (intraday):	2.30B
Enterprise Value (27-Sep-05) <sup>3</sup> :	4.46B
Trailing P/E (ttm, intraday):	14 49
Forward P/E (fye 30-Sep-06) <sup>1</sup> :	15 04
PEG Ratio (5 yr expected):	2 70
Price/Sales (ttm):	0.51
Price/Book (mrq):	1 42
Enterprise Value/Revenue (ttm) <sup>3</sup> :	1.00
Enterprise Value/EBITDA (ttm) <sup>3</sup> :	8 849

**FINANCIAL HIGHLIGHTS****Fiscal Year**

Fiscal Year Ends:	30-Sep
Most Recent Quarter (mrq):	30-Jun-05

**Profitability**

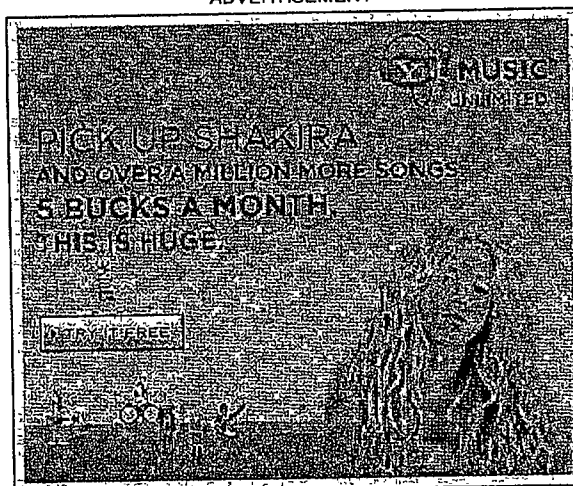
Profit Margin (ttm):	3.28%
Operating Margin (ttm):	7.70%

**Management Effectiveness**

Return on Assets (ttm):	5.55%
Return on Equity (ttm):	11.50%

**Income Statement**

Revenue (ttm):	4.46B
Revenue Per Share (ttm):	60.548
Qtrly Revenue Growth (yoy):	66.60%
Gross Profit (ttm):	562.19M
EBITDA (ttm):	503.97M

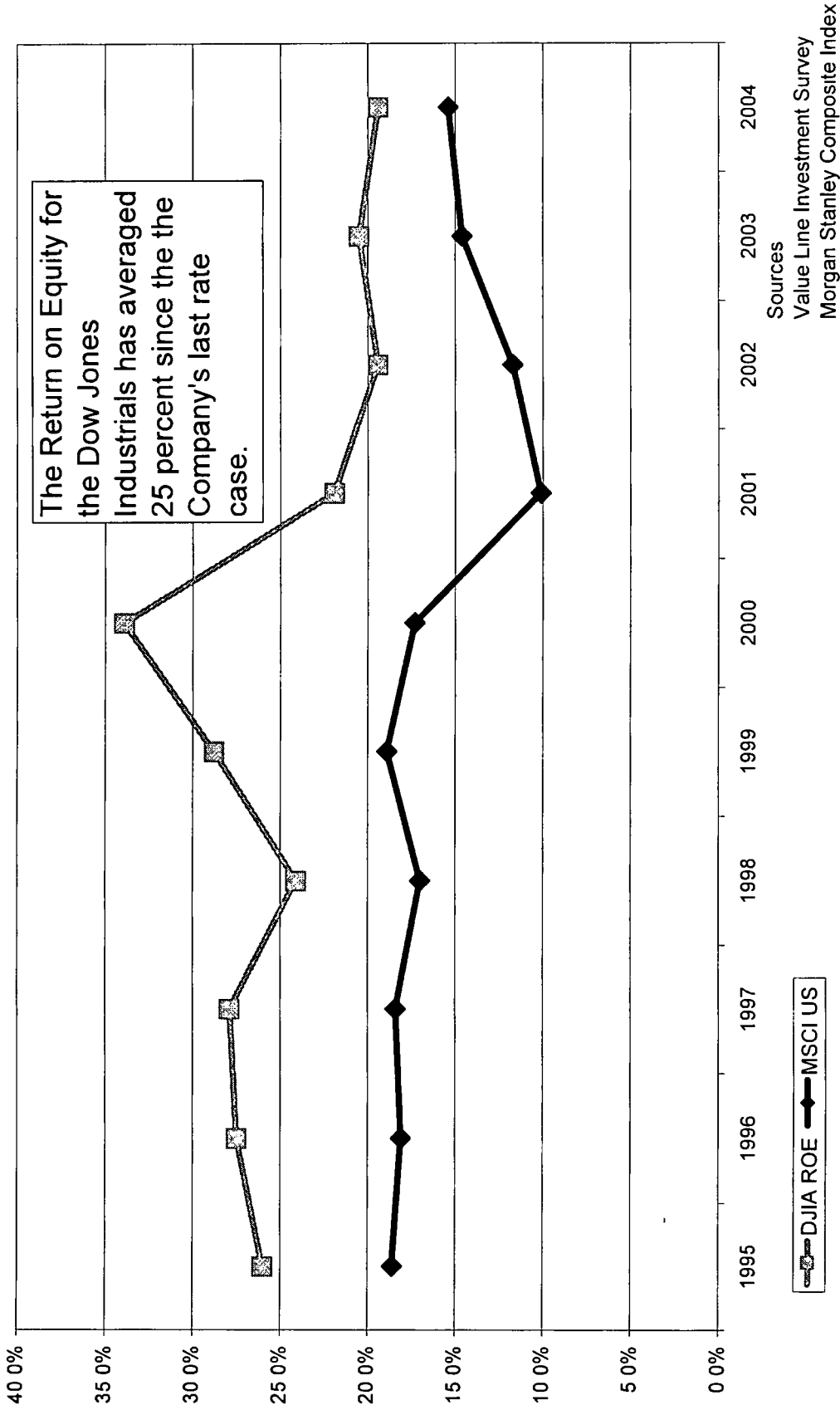
**ADVERTISEMENT****TRADING INFORMATION****Stock Price History**

Beta:	N/A
52-Week Change <sup>3</sup>	14.87%
S&P500 52-Week Change <sup>3</sup> :	N/A
52-Week High (03-Aug-05) <sup>3</sup> :	29.97
52-Week Low (15-Oct-04) <sup>3</sup> :	24.60
50-Day Moving Average <sup>3</sup> :	29 01
200-Day Moving Average <sup>3</sup> :	28.22

**Share Statistics**

Average Volume (3 month) <sup>3</sup> :	269,105
Average Volume (10 day) <sup>3</sup> :	244,843
Shares Outstanding	80.35M
Float	N/A
% Held by Insiders <sup>4</sup> :	1.78%

Average Return on Equity  
Broad Market Indices  
1995 to 2004



## Atmos Energy TN

## AG Witness Steve Brown's Comparable Utilities

## Most Current Rate Case Comparison

Company	Decision Date	State	Allowed ROE	Equity Ratio
AGL Resources	4/29/2005	Georgia	10 90%	
KeySpan	10/31/2003	Massachusetts	10 20%	50 00%
Laclede Group	10/3/2002	Missouri		
New Jersey Resources	1/5/1994	New Jersey	11 50%	52 74%
NICOR	4/3/1996	Illinois	11 13%	58 08%
Northwest Natural	6/23/2004	Washington		
Peoples Energy	11/8/1995	Illinois	11 20%	54 06%
Piedmont Natural	10/30/2003	North Carolina	11 00%	51 14%
Southwest Gas	8/26/2004	Nevada	10 50%	40 00%
Southwest Gas	8/26/2004	Nevada	10 50%	40 00%
WGL Holdings	9/27/2004	Virginia	10 50%	50 96%
Averages			10 83%	49 62%

Source Regulatory Research Associates' Regulatory Focus



IN THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: PETITION TO OPEN AN )  
INVESTIGATION TO DETERMINE )  
WHETHER ATMOS ENERGY CORP. )  
SHOULD BE REQUIRED BY THE TRA )  
TO APPEAR AND SHOW CAUSE THAT )  
ATMOS ENERGY CORP. IS NOT )  
OVEREARNING IN VIOLATION OF )  
TENNESSEE LAW AND THAT IT IS )  
CHARGING RATES THAT ARE JUST )  
AND REASONABLE )

Docket No. 05-00258

TESTIMONY OF THOMAS H. PETERSEN

1 Q. Please state your name, job title and business address.

2 A. My name is Thomas H. Petersen. I am Director of Rates for Atmos Energy  
3 Corporation ("Atmos" or "Company"), 5430 LBJ Freeway, Dallas, Texas 75240. I  
4 am responsible for rate studies of the Company's gas utility operations in 12  
5 states including Tennessee.

6  
7 Q. What is your educational background and professional experience?

8  
9 A. I received a Bachelor of Science degree in accounting from the University of  
10 Nebraska at Omaha and a Master of Arts degree with a major in finance from the  
11 University of Iowa. I am a Chartered Financial Analyst. From July 1980 through  
12 March 1989, I was employed in Rates and Tariffs Division of the Kentucky Public  
13 Service Commission. I was Manager of Rates and Revenue Requirements for  
14 Atmos from April 1989 through September 1997. I was Director of Price Policy  
15 and Administration from October 1997 through September 1998. I have been in  
16 my current position since October 1998

17 **Q. What is the scope of your testimony in this proceeding?**

18  
19 A. My testimony discusses the appropriateness for Atmos of the capital structure  
20 calculated by Dr. Brown, how the calculation of an earned rate of return in a rate  
21 case differs from the calculation in a 3.03 filing and changes in the company's  
22 cost structure since the last rate case in Tennessee.

23  
24 **Q. Would you comment on the capital structure calculation in Dr. Brown's**  
25 **Schedule 10 and used by Mr. McCormac to calculate a revenue surplus**  
26 **amount in Schedules 1 and 3?**

27  
28 A. Dr. Brown calculated a capital structure using data for three years for a group of  
29 other gas utilities excluding Atmos. His result is a capital structure of 43%  
30 common equity, 1% preferred stock, 43.2% long-term debt and 12.8% short-term  
31 debt. This differs greatly from Atmos' actual capital structure. Atmos does not  
32 have any preferred stock and uses much less short-term debt than Dr. Brown's  
33 capital structure. Additionally, Atmos does not use short-term debt to finance  
34 permanent capital additions. It does, however, use very short-term borrowings to  
35 finance gas purchases. Atmos' general ledger had no short-term debt  
36 outstanding for most months in calendar 2004 and for most months so far in  
37 2005. The average short-term debt balance on the general ledger was  
38 approximately 1% of total capital in calendar 2004 and less than that through the  
39 first eight months of calendar 2005. Consequently, the use of 12.8% short-term  
40 debt in Atmos' capital structure is not appropriate.

41  
42 In order to maintain strong investment grade ratings and control borrowing costs  
43 Atmos has a target capital structure of 50% equity and 50% debt. Atmos had  
44 exceeded its target of 50% equity as recently as September 2004. The equity  
45 ratio declined to around 40% with borrowing for the acquisition of TXU's gas  
46 utility properties in October 2004 but has been increasing since reaching

approximately 43% by the end of June 2005 as Atmos works toward its target capital structure.

**Q. Have any utility regulators approved a 50% equity capital and 50% debt capital structure for Atmos in recent rate proceedings?**

**A.** Yes. Most of Atmos' recent rate cases have been black box settlements in which no capital structure was stated. However, in cases decided in 2003 through 2005 Texas regulators explicitly used 50% equity and 50% long-term debt capital structures for Atmos in Texas Railroad Commission Docket Numbers 9539, 9563 and 9573 and various city ordinances. Cities have original jurisdiction over Atmos' rates in Texas. Also in 1999 the Louisiana Public Service Commission used a 50% equity and 50% long-term debt capital structure for Atmos in Docket Numbers U-21922 and U-23508

**Q. How does the calculation of an earned rate of return on rate base in a rate case differ from the calculation of a rate of return on rate base in the 3.03 filings?**

**A.** The calculation in the 3.03 filings uses historic per book data with no corrections or adjustments. The rate base is calculated using the items requested by staff specifically for purposes of the informational filing.

In a rate case, all test year expense and revenue items are reviewed and, if needed, adjusted to ongoing normal levels during the attrition period. A test year may contain out of period expenses, expense credits or revenues and these should be removed in order to arrive at appropriate amounts for ratemaking. In addition, a test year may contain unusually high or low levels of some expenses or revenues and these should be adjusted to normal levels. Per books revenues should be adjusted from the test year to the attrition period to reflect patterns of

changes in the number of customers and in usage per customer. Per books expenses also would be adjusted from the test year to the attrition period to reflect inflationary trends. For example, medical expenses will increase from the test year to the attrition year due to higher prices for medical care. Per books expenses will also be adjusted from the test year to the attrition year to reflect changes in activity levels. For example, the recent dramatic increase in gas prices will undoubtedly increase the number of bills that go unpaid, therefore in a current rate filing uncollectible expenses would need to be increased from the historic test year to the attrition year. The rate base in a rate case would reflect plant additions and other changes between the historic test year and the attrition year. For example, in a current rate filing storage gas in rate base would be re-priced to reflect the recent increase in gas prices.

The changes in level of costs from the historic test year to the attrition year are likely to be significant in a rate proceeding. For example, in the last United Cities rate filing in Tennessee (Docket 95-02258) the rate of return on rate base in the unadjusted historic test year was 11.48% while the rate of return on rate base in the adjusted attrition year was significantly lower at 8.96%. In that case, the company requested a rate of return of 11 16%, less than the rate of return in the historic test year. That case resulted in an approved revenue increase of more than \$2.2 million.

**Q. Dr. Brown emphasizes the decline in interest rates since the last rate case in Tennessee. Have other costs changed significantly since the last rate case?**

**A.** Yes. Since the last rate case the company has invested heavily in technology. As a result, the rate base has grown from approximately \$112 million in the last rate case to approximately \$155 million in the August, 2005 3.03 filing. With this increased investment depreciation expense has increased from approximately \$7.8 million to approximately \$11.4 million and other taxes have increased from

109 less than \$4.4 million to approximately \$5.8 million. Further, the technology  
110 investment has produced offsetting operating expense reductions that have  
111 contributed to no changes in rates for Tennessee consumers for 10 years so far.  
112

113 **Q. Does this conclude your testimony?**

114 **A. Yes.**



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**VERIFICATION**

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STATE OF Texas

COUNTY OF Dallas

I, Thomas H. Petersen, being first duly sworn, state that I am authorized to testify on behalf of Atmos Energy Corporation in the above-referenced docket and that my pre-filed testimony in this docket is true and correct to the best of my knowledge, information and belief.

Thomas H. Petersen

THOMAS H. PETERSEN

Sworn and subscribed before me this 14<sup>th</sup> day of October, 2005.

Ethel Z. Taylor  
Notary Public

My Commission Expires: 8/13/2006

